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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 INLAND CONCRETE ENTERPRISES,
11 INC. EMPLOYEE STOCK OWNERSHIP
PLAN; et al.,

12 Plaintiffs,

13 vs.

14 KRAFT AMERICAS, L.P., a Limited
15 Partnership; RUNE KRAFT, an
16 individual; and Does 1 through 5,
inclusive,

17 Defendants.

CASE NO.: CV10 1776 VBF (OPx)

Hon. Valerie Baker Fairbank

**DEFAULT JUDGMENT AGAINST
DEFENDANTS KRAFT AMERICAS,
L.P. AND RUNE KRAFT**

18
19 Plaintiffs Inland Concrete Enterprises, Inc Employee Stock Ownership Plan;
20 Inland Concrete Enterprises, Inc. and Nicholas L. Saakvitne, as Trustee of the Inland
21 Concrete Enterprises, Inc. Employee Stock Ownership Plan (hereinafter sometimes
22 referred to collectively as “Plaintiffs”) having filed their Motion for Default
23 Judgment Against Defendants Kraft Americas, L.P. and Rune Kraft, the Court
24 having reviewed all documents and pleadings filed in connection with their Motion
25 and having GRANTED the Motion:

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

27 1. Default Judgment hereby is entered against Defendants Kraft Americas,
28 L.P. and Rune Kraft on Plaintiffs’ Complaint [ECF No. 1] as follows:

1 2. On the First Claim for Relief for Declaratory Relief and Judgment by
2 Plaintiff Inland Concrete Enterprises, Inc. (“Inland. Inc.”) against Defendants Kraft
3 Americas, L.P. and Rune Kraft, the Court adjudges and declares:

4 a. That Plaintiff Inland Inc. was not the seller in connection with
5 the Oldcastle-Inland ESOP Transaction and received no compensation or
6 consideration in connection with the sale of stock by the Inland ESOP, that no
7 services were provided by Defendant Kraft Americas, L.P. or Rune Kraft to
8 Plaintiff Inland Inc. in connection with the Oldcastle-Inland ESOP
9 Transaction, and therefore, Plaintiff Inland Inc. is not liable, under any
10 circumstances, to Defendants Kraft Americas, L.P. and/or Rune Kraft for a fee
11 or compensation in connection with the Oldcastle-Inland ESOP Transaction.

12 b. That Plaintiff Inland Inc. never retained or engaged Defendants
13 Kraft Americas, L.P. and/or Rune Kraft to provide any services to, or for,
14 Inland Inc. in connection with the Oldcastle-Inland ESOP Transaction.

15 c. That Plaintiff Inland Inc. and Defendants Kraft Americas, L.P.
16 and/or Rune Kraft did not enter into a binding and enforceable express oral or
17 written agreement, implied in fact agreement, or implied in law agreement for
18 the payment of fees by Plaintiff Inland Inc. to Defendants Kraft Americas,
19 L.P. and/or Rune Kraft in connection with the Oldcastle-Inland ESOP
20 Transaction.

21 d. That both Kraft Americas, L.P. and Rune Kraft rendered brokers
22 services in connection with the Oldcastle-Inland ESOP Transaction, and under
23 California law, the entity or person rendering broker’s services in connection
24 with the Transaction was required to have either (i) a real estate broker’s
25 license because the Transaction involved the sale of a business opportunity
26 (*see* California Business & Professions Code (“B&P Code”) §§ 10030, 10130,
27 10131, 10136, and 10139 and *All Points Traders, Inc. v. Barrington*
28 *Associates*, 211 Cal.App.3d 723, 731 (1989)); or (ii) a securities broker-dealer

1 license because the Oldcastle-Inland ESOP Transaction was the sale of stock
2 (*see* B&P Code § 10008.5; California Corporations Code (“Corp. Code”) §§
3 25210(a) and 25504 and *Owen v. Off*, 36 Cal.2d 751, 757 (1951); *Nationwide*
4 *Inv. Corp. v. California Funeral Services*, 40 Cal.App.3d 494, 503 (1974);
5 *Rhode v. Bartholomew*, 94 Cal.App.2d 272, 282 (1949)).

6 e. That neither Kraft Americas, L.P. nor Rune Kraft had either a real
7 estate broker’s license or a securities broker-dealer license at any time before,
8 during or after the Oldcastle-Inland ESOP Transaction.

9 f. That, therefore, Defendants Kraft Americas, L.P. and/or Rune
10 Kraft acted unlawfully when it/he rendered broker’s services, and accordingly,
11 any express or implied agreement for such a fee is void and both Kraft
12 Americas, L.P. and Rune Kraft are barred from recovering a fee from Inland
13 Inc. in connection with the Oldcastle-Inland ESOP Transaction.

14 g. That, under California law (*see, e.g., Rees v. Department of Real*
15 *Estate*, 76 Cal.App.2d 286, 295 (1977), *Tyrone v. Kelley*, 9 Cal.3d 1, 11-12
16 (1973)), Defendants Kraft Americas, L.P. and/or Rune Kraft did not render the
17 limited services of a finder because Kraft Americas, L.P.’s and Rune Kraft’s
18 actions extended far beyond simply introducing Oldcastle and Inland ESOP
19 and included, among other things, “running this transaction [Kraft Americas,
20 L.P.’s and/or Rune Kraft’s] way,” and “handl[ing] the negotiations between
21 the parties.”

22 h. That the claims, if any, that Defendants Kraft Americas, L.P.
23 and/or Rune Kraft may have ever had against Inland Inc. for fees or
24 compensation in connection with the Oldcastle-Inland ESOP Transaction are
25 barred by the two-year statute of limitations set forth at California Code of
26 Civil Procedure (“CCP”) §339, subdivision 1.

27 i. That the claims, if any, Defendants Kraft Americas, L.P. and/or
28 Rune Kraft ever had against Plaintiff Inland Inc. for fees or compensation are

1 barred because both Kraft Americas, L.P. and Rune Kraft had multiple
2 undisclosed conflicts of interest, breached its/his duties of undivided loyalty
3 and breached its/his fiduciary duties owed to Inland, Inc. by failing to disclose
4 material facts to Inland Inc. and,

5 j. Costs of suit incurred herein and reasonable attorney's fees
6 according to proof, are awarded to Plaintiff Inland Inc. pursuant to CCP
7 §1029.8 (a).

8 3. On the Second Claim for Relief for Declaratory Relief and Judgment by
9 Plaintiffs Inland Concrete Enterprises, Inc. Employee Stock Ownership Plan and
10 Nicholas L. Saakvitne, in his representative capacity as Trustee of the Inland ESOP
11 ("Trustee Saakvitne") (hereinafter referred to collectively as "Plaintiff Inland
12 ESOP") against Defendants Kraft Americas, L.P. and Rune Kraft, the Court adjudges
13 and declares:

14 a. That Plaintiff Inland ESOP and Defendants Kraft Americas, L.P.
15 and/or Rune Kraft did not enter into a binding and enforceable express oral or
16 written agreement, implied in fact agreement, or implied in law agreement for
17 the payment of fees by Plaintiff Inland ESOP to either Kraft Americas, L.P. or
18 Rune Kraft in connection with the Oldcastle-Inland ESOP Transaction.

19 b. That Defendants Kraft Americas, L.P. and/or Rune Kraft
20 rendered broker's services in connection with the Oldcastle-Inland ESOP
21 Transaction, and under California law, the entity or person rendering broker's
22 services in connection with the Oldcastle-Inland ESOP Transaction was
23 required to have either (i) a real estate broker's license because the Oldcastle-
24 Inland ESOP Transaction involved the sale of a business opportunity (*see*
25 California Business & Professions ("B&P") Code §§ 10030, 10130, 10131,
26 10136, and 10139 and *All Points Traders, Inc. v. Barrington Associates*, 211
27 Cal.App.3d 723, 731 (1989)); or (ii) a securities broker-dealer license because
28 the Oldcastle-Inland ESOP Transaction was the sale of stock (*see* B&P Code §

1 10008.5; California Corporations Code (“Corp. Code”) §§ 25210(a) and
2 25504 and *Owen v. Off*, 36 Cal.2d 751, 757 (1951); *Nationwide Inv. Corp. v.*
3 *California Funeral Services*, 40 Cal.App.3d 494, 503 (1974); *Rhode v.*
4 *Bartholomew*, 94 Cal.App.2d 272, 282 (1949)).

5 c. That neither Kraft Americas, L.P. nor Rune Kraft had either a real
6 estate broker’s license or a securities broker-dealer license at the time before,
7 during or after the Oldcastle-Inland ESOP Transaction.

8 d. That, therefore, Defendants Kraft Americas, L.P. and/or Rune
9 Kraft acted unlawfully when it/he rendered broker’s services, and accordingly,
10 any express or implied agreement for such a fee is void and both Kraft
11 Americas, L.P. and Rune Kraft are barred from recovering a fee from Inland
12 ESOP in connection with the Oldcastle-Inland ESOP Transaction.

13 e. That, under California law (*see, e.g., Rees v. Department of Real*
14 *Estate*, 76 Cal.App.2d 286, 295 (1977), *Tyrone v. Kelley*, 9 Cal.3d 1, 11-12
15 (1973)), Defendants Kraft Americas, L.P. and/or Rune Kraft did not render the
16 limited services of a finder because Kraft Americas, L.P.’s and Rune Kraft’s
17 actions extended far beyond simply introducing Oldcastle and Plaintiff Inland
18 ESOP and included, among other things, “running this transaction [Kraft
19 Americas, L.P.’s and/or Rune Kraft’s] way,” and “handl[ing] the negotiations
20 between the parties.”

21 f. That the claims, if any, that Defendants Kraft Americas, L.P.
22 and/or Rune Kraft may have ever had against Inland ESOP for fees or
23 compensation in connection with the Oldcastle-Inland ESOP Transaction are
24 barred by the two-year statute of limitations set forth at California Code of
25 Civil Procedure (“CCP”) §339, subdivision 1.

26 g. That the claims, if any, Defendants Kraft Americas, L.P. and/or
27 Rune Kraft ever had against Plaintiff Inland ESOP for fees or compensation
28 are barred because both Kraft Americas, L.P. and Rune Kraft then had

1 multiple undisclosed conflicts of interest, breached its/his duties of undivided
2 loyalty and breached its fiduciary duties owed to Inland, Inc. by failing to
3 disclose material facts to Plaintiff Inland ESOP.

4 h. That Plaintiff Inland ESOP is an employee benefit plan governed
5 by ERISA, 29 U.S.C. §1001 et seq.

6 i. That Defendants Kraft Americas, L.P. and/or Rune Kraft, as an
7 entities or persons who rendered services to Plaintiff Inland ESOP, are a
8 “party in interest” as that term is defined by ERISA. ERISA §3(14)(B), 29
9 U.S.C. §1002(14)(B).

10 j. That transactions between a plan and a party in interest – and the
11 amount of compensation that may be paid by a plan to a party in interest – are
12 regulated by ERISA’s prohibited transaction rules, ERISA §§ 406(a) and 408,
13 29 U.S.C. §§ 1106(a) and 1108, which make the furnishing of goods, services,
14 or facilities between the plan and a party in interest a prohibited transaction
15 (ERISA §406(a)(1)(C)) unless “no more than reasonable compensation is paid
16 therefor.” ERISA § 408(b)(2).

17 k. That ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a
18 participant, beneficiary or fiduciary of an employee benefit plan to bring a
19 civil action to obtain “appropriate equitable relief” to redress violations of
20 ERISA, including actions for declaratory relief.

21 l. That the \$5 million fee demanded by Defendant Kraft Americas
22 is not only beyond the realm of a reasonable fee in the industry, but it would
23 reduce the proceeds of the sale to the Inland ESOP participants substantially
24 below the fairness level determined by BCC, and therefore payment thereof
25 would constitute a prohibited transaction and be void or voidable and subject
26 to disgorgement (*see Harris Trust and Savings Bank v. Salomon Smith*
27 *Barney, Inc.*, 530 U.S. 238, 245 (2000); *Concha v. London*, 62 F.3d 1493,
28 1503-1504 (9th Cir. 1995); *Landwehr v. Dupree*, 72 F.3d 726, 734 (9th Cir.

1 1995)).

2 m. Costs of suit incurred herein and reasonable attorney's fees
3 according to proof, are awarded to Plaintiff Inland ESOP pursuant to CCP
4 §1029.8 (a) and ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).

5 4. On the Third Claim for Relief for Damages for Breach of Fiduciary
6 Duty by Plaintiff Inland ESOP against Defendants Kraft Americas, L.P. and Rune
7 Kraft, Plaintiff Inland ESOP is awarded \$3,000,000 in compensatory damages
8 against Defendants Kraft Americas, L.P. and Rune Kraft jointly and severally.

9 5. The Court shall determine costs and attorney's fees in accordance with
10 Local Rule 54.

11 Dated: June 22, 2011



Hon. Valerie Baker Fairbank,
United States District Judge